



General Assembly

January Session, 2005

Raised Bill No. 1265

LCO No. 4313

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Referred to Committee on Finance, Revenue and Bonding

Introduced by:
(FIN)

AN ACT CONCERNING PENALTIES FOR FAILURE TO REPORT LISTED TRANSACTIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage and applicable to any open tax*
2 *period*) A penalty is hereby imposed on every person who engages in
3 activities described in Section 6700(a) of the Internal Revenue Code of
4 1986, or any subsequent corresponding internal revenue code of the
5 United States, as from time to time amended, and who is subject to the
6 fifty per cent penalty imposed thereunder, whether or not such penalty
7 has been imposed, where such activities affect tax returns required to
8 be filed with the Commissioner of Revenue Services. The amount of
9 the penalty imposed hereunder shall be equal to fifty per cent of the
10 gross income derived from, or to be derived from, such activities by
11 such person.

12 Sec. 2. Section 12-233 of the general statutes is repealed and the
13 following is substituted in lieu thereof (*Effective from passage and*
14 *applicable to income years commencing on or after January 1, 2005*):

15 (a) (1) The commissioner shall [, (1)] examine the tax return filed

16 under this chapter by a taxpayer and may make such further audit or
 17 investigation as the commissioner deems necessary, and if the
 18 commissioner determines that there is a deficiency with respect to the
 19 payment of any tax due under this chapter, the commissioner shall
 20 notify the taxpayer thereof. Except as otherwise provided in this
 21 chapter, the commissioner shall (A) in the case of a return on which an
 22 operating loss is not reported, [within] not later than three years after
 23 the due date for the filing of such return or within three years after the
 24 date on which such return was received by [him] such commissioner,
 25 whichever period expires later, or [(2)] (B) in the case of a return on
 26 which an operating loss is reported, within three years after the due
 27 date or the date of receipt by the commissioner, whichever period
 28 expires later, of the return on which a carry-over of such loss is fully
 29 utilized or deemed fully utilized because such loss is not available for
 30 deduction in any subsequent income year, examine it and, in case any
 31 error is disclosed by such examination, shall [,within thirty days after
 32 such disclosure, notify the taxpayer thereof] mail a notice of deficiency
 33 assessment to the taxpayer. Where, not later than the sixty-day period
 34 ending on the day on which the time prescribed in this section for
 35 mailing a notice of deficiency assessment for any income year would
 36 otherwise expire, the commissioner receives a written document
 37 signed by such taxpayer showing that such taxpayer owes an
 38 additional amount of tax for such income year, the commissioner then
 39 shall have up to sixty days after the day such written document is
 40 received in which to mail a notice of deficiency assessment.

41 (2) A notice of deficiency assessment may be mailed to the taxpayer
 42 at any time in the case of (A) failure to file a return, including any
 43 amended return required pursuant to section 12-226, or (B) a
 44 deficiency due to fraud or intent to evade the provisions of this chapter
 45 or regulations promulgated thereunder.

46 (3) In the case of an omission from gross income of an amount
 47 properly includible therein that is in excess of twenty-five per cent of
 48 the amount of gross income stated in the return, a notice of deficiency

49 assessment may be mailed to the taxpayer at any time not later than six
 50 years after the return was filed. For purposes of this subdivision, there
 51 shall not be taken into account any amount that is omitted from gross
 52 income stated in the return if such amount is disclosed in the return or
 53 in a statement attached to the return, in a manner adequate to apprise
 54 the commissioner of the nature and amount of such item.

55 (4) In the case of a failure to disclose a listed transaction, as defined
 56 in Section 6707A of the Internal Revenue Code, on the taxpayer's
 57 federal income tax return, a notice of deficiency assessment may be
 58 mailed to the taxpayer at any time not later than six years after the
 59 return required under this chapter for the same income year was filed.

60 (b) When it appears that any part of the deficiency for which a
 61 deficiency assessment is made is due to negligence or intentional
 62 disregard of the provisions of this part or regulations promulgated
 63 thereunder, there shall be imposed a penalty equal to ten per cent of
 64 the amount of such deficiency assessment, or fifty dollars, whichever is
 65 greater. When it appears that any part of the deficiency for which a
 66 deficiency assessment is made is due to fraud or intent to evade the
 67 provisions of this part or regulations promulgated thereunder, there
 68 shall be imposed a penalty equal to twenty-five per cent of the amount
 69 of such deficiency assessment. No [taxpayer] part of a deficiency shall
 70 be subject to more than one penalty under this section in relation to the
 71 same tax period. Any decision rendered by any federal court holding
 72 that a taxpayer has filed a fraudulent return with the Director of
 73 Internal Revenue shall subject the taxpayer to the penalty imposed by
 74 this section without the necessity of further proof thereof, except when
 75 it can be shown that the return to the state so differed from the return
 76 to the federal government as to afford a reasonable presumption that
 77 the attempt to defraud did not extend to the return to the state.

78 (c) [Within] Not later than thirty days [of] after the mailing of [such]
 79 a notice of deficiency assessment, the taxpayer shall pay to the
 80 commissioner, in cash or by check, draft or money order drawn to the

81 order of the Commissioner of Revenue Services, any additional
 82 amount of tax shown to be due by [the corrected return or] such notice,
 83 or such taxpayer shall be paid by the State Treasurer, upon order of the
 84 Comptroller, any amount shown to be due it by [such] the corrected
 85 return. The failure of the taxpayer to receive any timely mailed notice
 86 required by this section shall not relieve [him] such taxpayer of the
 87 obligation to pay the tax assessed under the terms of this part or any
 88 interest or penalties thereon.

89 (d) When, before the expiration of the time prescribed in this section
 90 for the examination of the return or the assessment of the tax, both the
 91 commissioner and the taxpayer have consented in writing to such
 92 examination or assessment after such time, the return may be
 93 examined and the tax may be assessed at any time prior to the
 94 expiration of the period agreed upon. The period so agreed upon may
 95 be extended by subsequent agreements in writing made before the
 96 expiration of the period previously agreed upon. The commissioner
 97 may also in such a case waive the statute of limitations against a claim
 98 for refund by such taxpayer.

99 (e) For purposes of this section, a tax return filed under this chapter
 100 before the last day prescribed by law or by any regulation adopted
 101 pursuant to this chapter for the filing of such return, determined
 102 without regard to any extension of time for filing, shall be deemed to
 103 be filed on such last day.

104 Sec. 3. (NEW) *(Effective from passage and applicable to any open tax*
 105 *period)* When it appears that any part of the deficiency for which a
 106 deficiency assessment is made pursuant to section 12-233 of the
 107 general statutes, as amended by this act, is due to failure to disclose a
 108 listed transaction, as defined in Section 6707A of the Internal Revenue
 109 Code of 1986, or any subsequent corresponding internal revenue code
 110 of the United States, as from time to time amended, on the taxpayer's
 111 federal tax return, there shall be imposed a penalty equal to seventy-
 112 five per cent of the amount of such deficiency assessment.

113 Sec. 4. Subsection (a) of section 12-728 of the general statutes is
 114 repealed and the following is substituted in lieu thereof (*Effective from*
 115 *passage and applicable to taxable years commencing on or after January 1,*
 116 *2005*):

117 (a) After a final return pursuant to the provisions of this chapter is
 118 filed, the commissioner shall cause the same to be examined and may
 119 make such further audit or investigation or reaudit as the
 120 commissioner deems necessary, and if the commissioner determines
 121 that there is a deficiency with respect to the payment of any tax due
 122 under this chapter, the commissioner shall assess or reassess the
 123 additional taxes, penalties and interest due to this state, give notice of
 124 such assessment or reassessment to the taxpayer and make demand
 125 upon the taxpayer for payment. [Within] Not later than sixty days [of]
 126 after the mailing of such notice, the taxpayer shall pay to the
 127 commissioner, in cash or by check, draft or money order drawn to the
 128 order of the commissioner, the amount of the deficiency. Such amount
 129 shall bear interest at the rate of one per cent per month or fraction
 130 thereof from the date when the original tax became due and payable.
 131 When it appears that any part of the deficiency for which a deficiency
 132 assessment is made is due to negligence or intentional disregard of the
 133 provisions of this chapter or regulations adopted thereunder, there
 134 shall be imposed a penalty equal to ten per cent of the amount of such
 135 deficiency assessment. When it appears that any part of the deficiency
 136 for which a deficiency assessment is made is due to fraud or intent to
 137 evade the provisions of this chapter or regulations adopted
 138 thereunder, there shall be imposed a penalty equal to twenty-five per
 139 cent of the amount of such deficiency assessment. No [taxpayer] part
 140 of a deficiency assessment shall be subject to more than one penalty
 141 under this section in relation to the same tax period. Any decision
 142 rendered by any federal court holding that a taxpayer has filed a
 143 fraudulent return with the Director of Internal Revenue shall subject
 144 the taxpayer to the twenty-five per cent penalty imposed by this
 145 subsection without the necessity of further proof thereof, except when
 146 it can be shown that the return to the state so differed from the return

147 to the federal government as to afford a reasonable presumption that
148 the attempt to defraud did not extend to the state.

149 Sec. 5. (NEW) (*Effective from passage and applicable to any open tax year*)
150 When it appears that any part of the deficiency for which a deficiency
151 assessment is made pursuant to section 12-728 of the general statutes,
152 as amended by this act, is due to failure to disclose a listed transaction,
153 as defined in Section 6707A of the Internal Revenue Code of 1986, or
154 any subsequent corresponding internal revenue code of the United
155 States, as from time to time amended, on the taxpayer's federal tax
156 return, there shall be imposed a penalty equal to seventy-five per cent
157 of the amount of such deficiency assessment.

158 Sec. 6. Subsection (c) of section 12-733 of the general statutes is
159 repealed and the following is substituted in lieu thereof (*Effective from*
160 *passage and applicable to taxable years commencing on or after January 1,*
161 *2005*):

162 (c) (1) If no return is filed or if a taxpayer makes, wilfully or
163 otherwise, a false or fraudulent return, a notice of deficiency
164 assessment may be mailed to the taxpayer at any time.

165 (2) If a taxpayer wilfully attempts in any manner to defeat or evade
166 a tax imposed by this chapter, a notice of deficiency assessment may be
167 mailed to the taxpayer at any time.

168 (3) If a taxpayer fails to disclose a listed transaction, as defined in
169 Section 6707A of the Internal Revenue Code, on the taxpayer's federal
170 tax return, a notice of deficiency assessment may be mailed to the
171 taxpayer at any time not later than six years after the return required
172 under this chapter for the same taxable year was filed.

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>from passage and applicable to any open tax period</i>	New section
Sec. 2	<i>from passage and applicable to income years commencing on or after January 1, 2005</i>	12-233
Sec. 3	<i>from passage and applicable to any open tax period</i>	New section
Sec. 4	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-728(a)
Sec. 5	<i>from passage and applicable to any open tax year</i>	New section
Sec. 6	<i>from passage and applicable to taxable years commencing on or after January 1, 2005</i>	12-733(c)

Statement of Purpose:

To establish penalties for both corporate business tax and personal income tax purposes on taxpayers who fail to report a listed transaction, also known as an abusive tax avoidance transaction.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]